

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS**

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:**  
**PETITION OF TAIWAN CULTURE CENTER, INC.,**

Petitioner

Tai L. Huang

For the Petitioner

\* \* \* \* \*

Juan Rodriguez

In Opposition to the Petition

\* \* \* \* \*

Board of Appeals Case No. S-2668  
(OZAH Referral No. 06-24)

Before: Françoise M. Carrier, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. STATEMENT OF THE CASE

Petition S-2668, filed January 31, 2006,<sup>1</sup> requests a special exception under Section 59-G-2.42 for a service organization, to be operated in an existing structure located at 7509 Needwood Road, Derwood, MD, known as Lot P1, Block B, Derwood Heights Subdivision, Tax Account No. 04-00048193, in the R-200 Zone. The Petitioner, Taiwan Culture Center, Inc., also requests waivers of the side yard requirement for the driveway and the parking area.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present petition and, in a report dated August 21, 2005, recommended *approval* with conditions that sharply limit the number of people that may be on site at one time. See Ex. 19.<sup>2</sup> Staff provided supplemental information, in response to questions from the Hearing Examiner, on September 12 and 13, 2006 and, following a post-hearing revision of the site plan, on October 13, 2006. See Exs. 24, 25 and 31. At its regular meeting on September 7, 2006, the Montgomery County Planning Board voted 5 to 0 to recommend *approval* with substantially the same conditions as recommended by Staff.<sup>3</sup> See Ex. 22.

On February 6, 2006 the Board of Appeals ("Board") scheduled a public hearing in this matter for June 19, 2006, to be conducted by a hearing examiner from the Office of Zoning and Administrative Hearings. The hearing was later postponed to September 15, 2006 at Petitioner's request, due to notification from Technical Staff that this matter would not be ready for the Planning Board's consideration until late July. The hearing was postponed a final time to September 30, 2006, in order to provide adequate notice of changes to the petition that were submitted less than ten days before the scheduled hearing date. The Hearing Examiner convened the public hearing on September

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<sup>1</sup> The application form states that the application was filed on December 30, 2005. See Ex. 1. On the outside cover of the file, the 12-30-05 date is barely visible, having been erased and replaced with the date of January 31, 2006. The forest conservation exemption form is dated January 30, 2006. See Ex. 7. The initial notice of hearing was mailed on February 6, 2006. See Ex. 12(a). Based on all of these elements, the Hearing Examiner surmises that the application may have initially been submitted on December 30, 2005, but was not considered filed until January 31, 2006.

<sup>2</sup> The Staff Report is quoted and paraphrased liberally in Part II of this report.

<sup>3</sup> It should be noted that neither Staff nor the Planning Board was aware of any neighborhood opposition to this project. The Staff Report, in fact, noted in more than one place that the Center has operated at this site for some time without complaints by neighbors, which is not the case.

30, 2006, at which time testimony and other evidence were submitted in support of and in opposition to the proposed special exception. The record was held open to permit revised submissions from the Petitioner, and closed on October 18, 2006. By Order dated November 21, 2006, the Hearing Examiner extended the time for submission of her report by four days, to November 21, 2006.

## **II. BACKGROUND**

For the convenience of the reader, background information is grouped by subject matter.

### ***A. The Subject Property and Neighborhood***

The subject property consists of approximately 1.46 acres of land located at 7509 Needwood Road in Derwood, at the northeast corner of Needwood Road and Redland Road. It is classified under the R-200 Zone. The property is improved with a small, one-story structure containing approximately 1,098 square feet of space, a small parking area near the front of the building, and an 18-space parking facility in the back yard, at the end of a long, wide driveway. The topography of the site slopes downward approximately 15 feet from Needwood Road (the southern boundary of the site) towards the northeast corner, where the parking lot is located. The driveway entrance is in the extreme southeast corner of the site. The driveway is approximately 43 feet wide at its entrance, and narrows down to 22 feet wide at its narrowest point, before widening again at the entrance to the parking lot. The site is surrounded on three sides (north, south and west) by Leland cypress trees of varying heights. The remaining open space is planted in grass, with scattered trees throughout the site.

The subject property abuts roadways to the south and west. To the east, it abuts a residential lot in the R-200 Zone that is developed with a single-family detached home, which is currently being expanded into a large, two-story structure. To the north, the subject site abuts property in the R-200 Zone that is encumbered with a forest conservation easement about 50 feet wide, which buffers the subject property from development on the Redland Place cul de sac. Confronting the subject site across Redland Road are townhouses and single-family detached homes in the PD-5 Zone. Confronting across Needwood Road are single-family residential properties in the RE-2 Zone.

The photographs on the pages that follow depict the subject property and some of the nearby land uses.

**Aerial View of Subject Property Provided by Technical Staff, from Ex. 25(b)**



Redland Rd.

**Front of Taiwan Culture Center , Ex. 9(j) bottom photo**



**View Down Driveway, Taiwan Culture Center on Left, Ex. 9(e) top photo**



**View of Parking Lot, under Light Snow, Ex. 9(c) top photo  
(Wheel-stop at end of parking lot visible behind tree trunks)**



**View of Rodriguez Home from Rear Yard of Site, Ex. 9(g) bottom photo  
(rear of Taiwan Culture Center building visible on right side)**



**Meeting Room One during Seminar, Ex. 9(h) bottom photo**



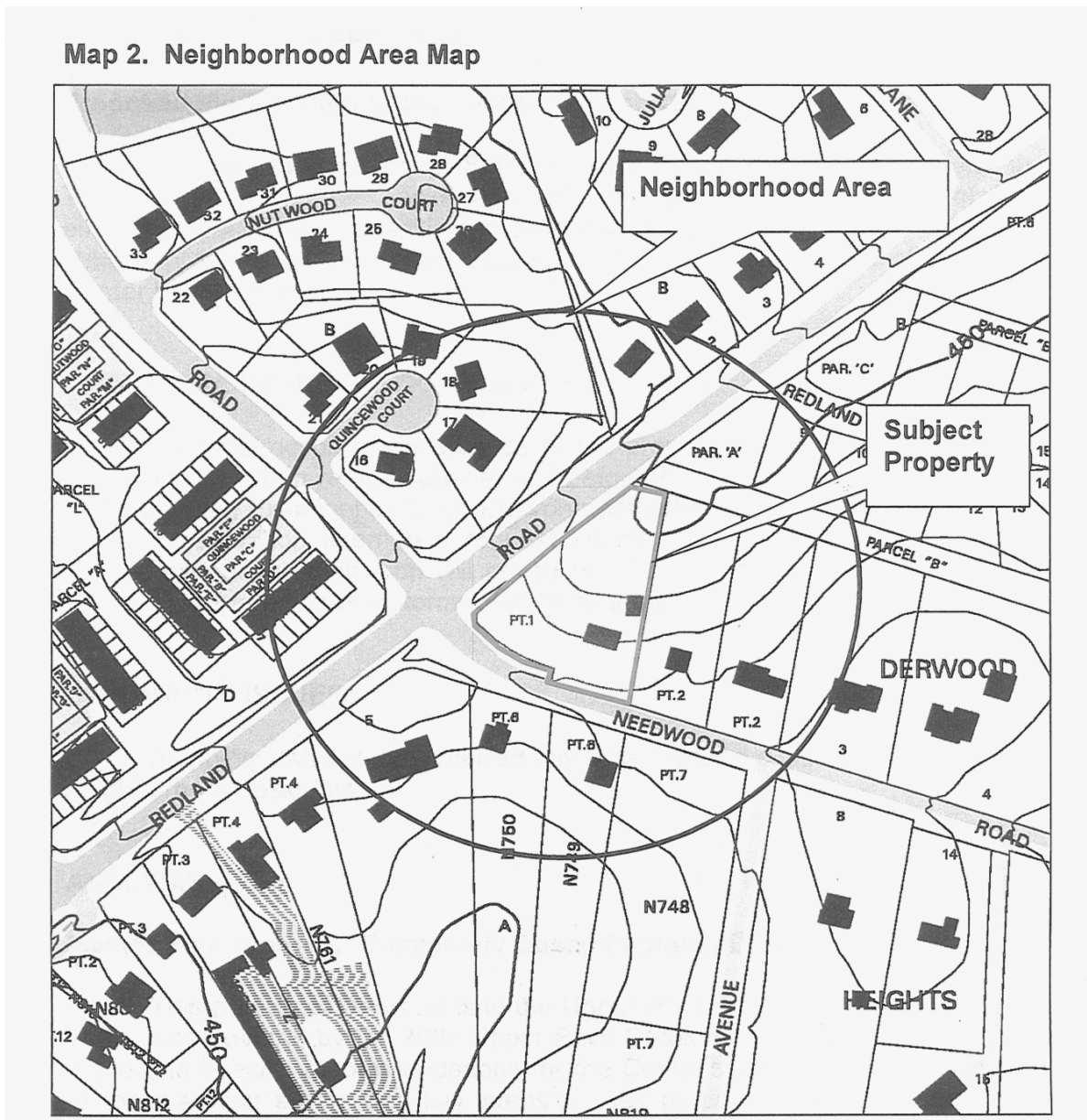
**Meeting Room Two, Ex. 9(k) bottom photo**



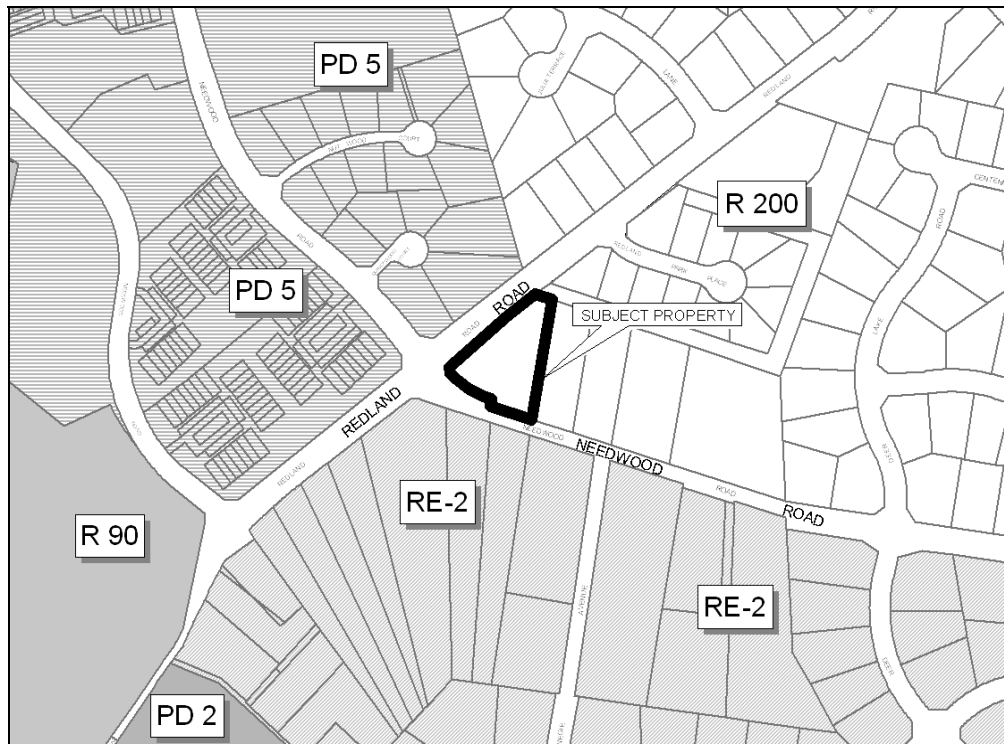


Technical Staff describes the general neighborhood of the site by means of the map reproduced below, which depicts the area within a certain radius of the subject property. The Hearing Examiner would be inclined to consider the relevant neighborhood as more of an ellipse, extending a bit farther to the east, to include the next four or five lots on each side of Needwood Road. This larger area may be seen on the zoning vicinity map on the next page.

**Neighborhood Area Map, from Staff Report at 6**



### GIS Zoning Map, excerpted from Staff Report at 5



### ***B. Master Plan***

The subject property is within the Upper Rock Creek Planning Area covered by the 2004 *Upper Rock Creek Area Master Plan* (“Master Plan”). Technical Staff reports that the Master Plan recommends that the site remain in an R-200 Zone, which permits the requested special exception. The Master Plan does not, however, make any specific recommendations for the subject property or the general neighborhood. Staff concludes that “the low intensity uses proposed for the Center . . . are in keeping with a primary objective of the Master Plan: maintaining the residential wedge character of this portion of Montgomery County.” Ex. 19 at 7. Staff notes that the use of an existing residential structure with limited external alteration also contributes to retaining the residential character of the area.

### ***C. The Petitioner and the Proposed Use***

#### **1. Taiwan Culture Center**

Petitioner proposes to continue operating the Taiwan Culture Center (the “Center”) from the subject site, as it has done at this location – without a special exception – since January 2004. The

Petitioner is a tax-exempt entity that was created in 1999, when the local Washington, D.C. area chapter of the national Taiwanese American Association became large enough to be an independent organization.

The Petitioner's by-laws describe its corporate purpose as follows:

To enhance the strength of the Taiwanese and Taiwanese-American culture among the members, to promote and facilitate mutual understanding between the Taiwanese culture and other cultures in the United States, to engage in social, cultural, educational, and other related activities, and to establish a center for the conduct of such activities by the members and the public.

Ex. 3(a) at 1. The by-laws further provide that the Center shall operate exclusively for charitable, cultural and educational purposes as a section 501(c)(3) organization.

A fundraising solicitation that the Petitioner provided as an overview of its history and purpose describes having a Taiwan Culture Center in the Washington, D.C. area as important, because the Washington area is "an ideal location from which to effectively promote Taiwanese culture, as well as a location from which to keep in touch with changes in the world. Furthermore, its creation will help promote and enhance the international status of Taiwan. It is equally important that Taiwanese Americans in the Washington, D.C. area have their own facility in which to conduct meeting [sic] and gathering [sic]." Ex. 3(a), Attachment A.

The Petitioner provided a chronology of activities related to the Center that begins in 1994, long before the Petitioner was incorporated or the subject site acquired. See Ex. 3(a), Attachment B. Historical activities include educational and cultural events such as a seminar on living wills and trusts, a seminar on the environmental benefits of recycling, a panel discussion on public policy issues related to Taiwan, an annual banquet held at a restaurant, and an annual concert of Taiwanese music held at a local high school.

## **2. Facilities on the Subject Site**

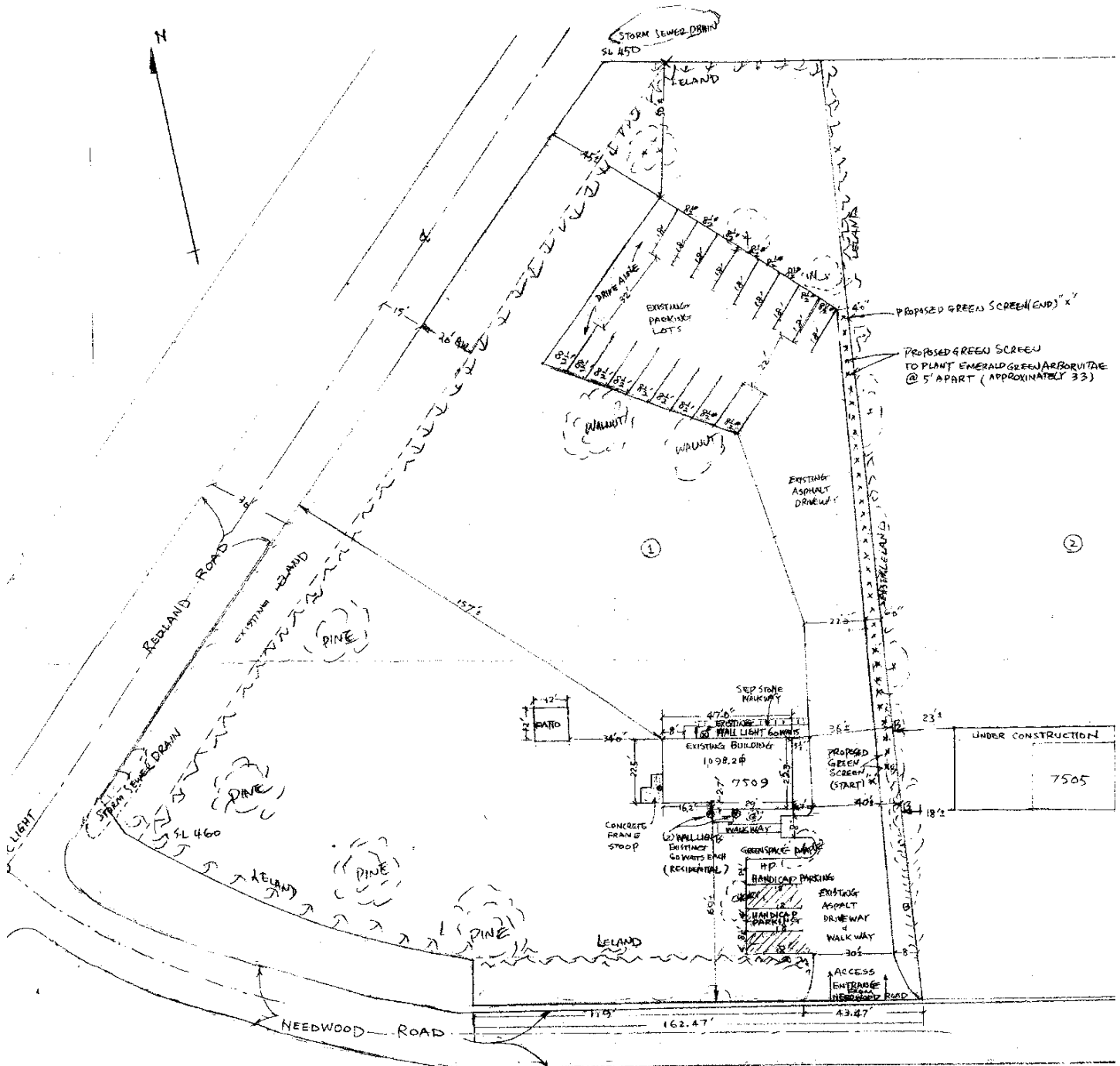
After its incorporation in 1999, the Petitioner searched for property for a headquarters, ultimately purchasing the subject site from a former member of the Taiwanese American Association in December 2003. The Center held an open house at the site on January 10, 2004, which, by all

accounts, was well-attended. The Petitioner made several improvements to the site during the spring and summer of 2004: demolishing a three-car garage that was filled with junk, bringing in topsoil and re-seeding the lawn, trimming trees, re-grading the driveway and striping it for parallel parking along the sides, and installing an 18-car parking lot in the rear of the site. These improvements may be seen on the submitted site plan, which is shown on the next two pages.

During its review of this petition, Technical Staff informed the Petitioner that parking cannot be permitted along the driveway for safety reasons. The narrowest part of the driveway is not wide enough to accommodate parked cars and the required two-way drive aisle. Parallel parking in the driveway also creates safety concerns for pedestrians, who have to choose between walking to the house over the grass, and walking up the driveway. Petitioner's representative at the hearing, Tai L. Huang, testified that the day before the hearing, a member of the organization had painted over the parking space lines on the driveway with tar, to indicate that parking is not permitted in the driveway. The Hearing Examiner has recommended, as a condition of approval, that the Petitioner be required to install "No Parking in Driveway" signs along both sides of the driveway.

The distance between the driveway and the eastern property line is approximately eight feet at the site entrance, on Needwood Road, and narrows to four feet by end of the driveway. The site plan indicates that the distance between the eastern property line and the closest parking space in the parking lot is approximately four feet. Thus, both the parking lot and the driveway violate the applicable setback requirements, which call for a 24-foot side setback for both. See Code § 59-E-2.83. Accordingly, approval of this application would require a substantial waiver of the side yard setback requirement. The parking lot is not readily visible from the street due to existing vegetation on three sides of the site, but it is partially visible from the lot to the east, which is screened only by intermittent vegetation, substantially all of which is located on the other lot. Technical Staff and the Planning Board recommend granting the requested side setback waivers on condition that the Petitioner installs screening along the eastern property line in the form of a six-foot, solid wood fence along the length of the driveway.

## Site Plan Graphics, from Ex. 30(a)



### Site Plan Notes, from Ex. 30(a)

#### NOTES

1. ACCESS  
EXISTING DRIVEWAY AND WALKWAY (ASPHALT)  
CONNECTING EXISTING ENTRANCE TO  
COUNTY ROAD ( NEEDWOOD ROAD)
2. PROPERTY  
DIMENSIONS AS SPECIFIED IN 30 SCALE  
LOT LOCATION PLOT
3. BUILDING  
EXISTING BUILDING WITH 1098 SQUARE FOOT
4. PARKING SPACES  
EXISTING PARKING SPACES AS SPECIFIED  
IN 19 SCALE PLOT (3 HANDICAP PARKING &  
16 PARKING SPACES)
5. CALCULATION OF BUILDING COVERAGE  
DENSITY  $1098 / (43560 \times 1.46) = 1.26 \%$   
GREEN AREA 81%
6. LANDSCAPING  
EXISTING AS SPECIFIED IN 30 SCALE PLOT
7. LIGHTING (RESIDENTIAL) 60 WATTS EACH BULB  
EXISTING TWO WALL LIGHTS IN FRONT  
EXISTING ONE WALL LIGHT IN BACK
8. FCP EXEMPTION NRI/FSD#4-06185E  
DATED 1/30/06
9. DEVELOP PLAN IN ACCORDANCE WITH  
THE MONTGOMERY COUNTY ZONING ORDINANCE  
SECTION 59-D-3.22
10. THIS LOT HAS SL 460 IN FRONT & SL 450  
IN THE BACK. THERE ARE STORM SEWER  
DRAIN ON BOTH CORNERS WITH REDLAND  
ROAD.
11. SCREEN DRIVEWAY ENTRANCE ALONG EASTERN  
SIDE WILL BE PLANTED EMERALD GREEN  
ARBORVITAE AT 5' APART

The Petitioner offered during the hearing to install evergreen plantings in the space between the driveway and the property line. This was based on the shared preference of the Petitioner and the adjacent neighbor to the east for a vegetative screen, rather than a fence.<sup>4</sup> Technical Staff

<sup>4</sup> The adjacent neighbor made clear that he opposes the proposed special exception, but when pressed to choose between a fence and vegetation, he voiced a preference for plantings.

reviewed the revised site plans submitted after the hearing and found the proposed vegetation sufficient. See Ex. 31. The waiver issue is discussed in more detail in Part II.E. below.

The parking lot at the rear of the subject property is striped for 18 spaces, with nine spaces on each side of the drive aisle. Technical Staff recommends that either the two spaces farthest from the driveway be left open for cars to turn around to exit the site, or the paved area be enlarged to create a dedicated turnaround area at the end of the parking lot. See Ex. 19 at 2; Ex. 31. The Planning Board recommended, as a condition of approval, that the Petitioner be required to “[i]ninstall a turnaround area for the vehicles parked in the last spaces of the parking facility.” Ex. 22 at 2. The final site plan submitted in this case does not depict the enlargement of the paved area to create a turnaround area. According to testimony and a post-hearing submission, however, the Petitioner appears to understand that only 16 of the spaces in the parking lot may be used. The Hearing Examiner has recommended, as a condition of approval, that diagonal striping and “No Parking – Turnaround Area” signs be placed in the two spaces farthest from the driveway, and that members be directed not to park in those spaces.

In addition to the parking lot at the rear of the site, a small parking area is located at the front of the property, between the driveway entrance and the house. The Petitioner intends to use this area for handicapped-accessible parking, and it is shown on the submitted site plan with standard handicapped-accessible striping and signage. Technical Staff indicated, in a post-hearing memorandum, that this parking area is currently bricked, and that the Petitioner should be permitted to retain the brick, without standard accessibility striping and signage, because the Center is more like a club than a commercial use, and is located in a residential area. See Ex. 31. The Hearing Examiner notes that this suggestion would aid in retaining the residential appearance of the site, since this parking area appears to be visible from the driveway entrance. As reflected in the recommended conditions of approval, however, the Petitioner must be required to install whatever striping and signage are necessary to comply with the Americans with Disabilities Act.

The only structure on the site is a one-story building containing approximately 1,098 square feet of space on two floors – a ground floor and a basement. The ground floor contains an entryway, a library, a meeting room, a small computer center, an office and a bathroom. In the basement, the floor plan shows a kitchen and another meeting room, as well as a guest suite. Mr. Huang explained that the guest suite is used occasionally for a speaker who comes from out of town, or other outside visitors who may stay “a few days or weeks” on a temporary basis. The Petitioner proposes no changes to the exterior of the building.

The only signage on the property currently is a small identification sign on the front face of the building, next to the front door. Photographs suggest that due to the building setback and heavy landscaping, this sign is not readily visible from the street. The Petitioner intends to install a second sign, on the mail box, if the special exception is approved. This representation is reflected in a recommended condition of approval. Exterior lighting is limited to residential-style fixtures near the front and rear entrances to the building.

### **3. Activities**

The Center is open, when volunteers are available, from 10:00 a.m. to 3:30 p.m. Monday through Thursday, and 10:00 a.m. to 3:00 p.m. on Fridays. The Petitioner’s Statement of Operations states that it may also be open at other times, depending on the availability of a volunteer and need. Ex. 3(a) at 2. For example, if someone wants to pick up materials from the Center library, specific arrangements may be made to do that. In addition, a person or family may occupy the premises on a short-term basis, such as a guest speaker, visitor or volunteer house sitter.

Regular activities at the Center include small get-togethers, computer use, use of the Taiwanese-oriented library, and preparing specialty menu items in the kitchen. The Statement of Operations indicates that on Saturdays, seminars on topics of interest to those involved in Taiwanese or Taiwanese-American culture are held between 2:00 and 5:00 p.m. in one of the two meeting rooms, which comfortably hold between 10 and 20 people. The Petitioner seeks approval to conduct similar activities on Sunday afternoons, between 1:00 and 5:00 p.m., although it is uncertain whether Sunday



seminars would ever be regularly established.<sup>5</sup> The nine-member Board of Directors meets every three months on week-end morning, usually between 9:00 a.m. and noon. The Center also has movie showings, which are described in the Statement of Operations as monthly events, but are provided for in the Planning Board's recommended conditions as weekly events. Movies end before dark: before 3:30 p.m. during the winter and before 8:00 p.m. during the summer. The Statement of Operations indicates that typically, five to ten viewers attend the movie showings.

The Planning Board and Staff recommended, as a condition of approval, that no more than 20 people be permitted on site at one time. The evidence suggests that this would be consistent with most of the Center's events, but not with the two largest: twice-annual open houses, one on a Saturday in January, from 10:00 a.m. to 2:00 p.m., and one on a Saturday in August, from 2:00 p.m. to 6:00 p.m. These open houses are held "to generate interest in the work and social atmosphere of the Center among interested persons, and include an introduction to Center activities." Ex. 3(a) at 2. A recent open house offered a health screening service, at which attendees received guidance and referrals from volunteer doctors. The Petitioner represents that people come and go during an open house, and typically there are no more than ten cars per hour. Mr. Huang readily conceded, however, that the open houses attract more than 20 people at a time to the site. When asked, by the Hearing Examiner, about how the Center would comply with the recommended limitation of 20 people on site at one time, Mr. Huang's first response was to note that the open houses take place largely outdoors, at least in the summer. The Hearing Examiner pointed out that the 20-person limitation recommended by the Planning Board did not distinguish between outdoor and indoor activities. Mr. Huang then suggested that the Center could mail timed entry tickets to its members, to space out the number of attendees during the course of the open house and limit the number on site at any one time. There would be no practical way, he conceded, to control the arrivals and departures of any members of the public who attend the open house in response to advertising in the local newspaper.

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<sup>5</sup> The Hearing Examiner has simplified the timing of weekend events, in the recommended conditions of approval, by setting a time period of 1:00 to 5:00 p.m. on both Saturdays and Sundays.

The Petitioner identified the following as all the events that have taken place on the site, since its acquisition in 2003, which involved more than ten people (see Ex. 27; Tr. at 27-29):

<u>Date</u>	<u>Description</u>
8-19-06	Open house
6-24-06	Scholarship Award Ceremony
10-22-05	Internet security seminar
8-13-05	Open house with seminar on development of popular songs in Taiwan from the 1970s to the 1990s
5-14-05	Seminar on high diabetes rate of Taiwanese-Americans from historical/cultural perspective
6-12-04	Seminar on pepper species and how to grow them
1-10-04	Open house

The "Scholarship Award Ceremony" listed in the table above took place in connection with a scholarship program that the Center began two years ago. The program offers college scholarship funding to one high school student in each of ten high schools, five in Montgomery County and five in Virginia. The high schools are chosen in areas with significant Taiwanese-American populations, but the scholarships are open to all students, regardless of race or nationality. Scholarship awards are based on academic achievement, community service and other activities. Mr. Huang testified that in the first two years, the scholarship recipients have been a mix of Taiwanese-American and non-Taiwanese American students.

At the conclusion of Mr. Huang's hearing testimony, the Hearing Examiner observed that the evidence regarding the number of attendees at the open house events raised a credibility issue regarding assurances that the Center would be able to limit attendance to 20 people on site at one time. The Hearing Examiner suggested that the Petitioner consider what limitations on attendance would be realistic, and submit a written proposal to be considered as part of the special exception request. The Petitioner submitted a letter, after the hearing, which suggests the best means of creating an enforceable condition is to ensure that no more than 16 vehicles are allowed on site, and that no visitors park along adjacent roads. See Ex. 30. The Petitioner makes the following proposal for attendance limitations, based on "past experiences and future hopes for increased use of the Culture Center" (Ex. 30):

- Maximum of 20 people on site at one time on weekdays.
- Maximum of 30 people on site at one time for Saturday afternoon functions.
- Maximum of 60 people on site at one time for Sunday afternoon functions.
- Maximum of 80 people on site at one time during twice-annual open houses, with the Petitioner to use car-pooling and ticketing to ensure that this level is not exceeded.

The Petitioner's post-hearing letter notes that the higher occupancy limits requested "are ceilings that may never be reached or reached only rarely or sporadically, and reflect optimism about the future growth in usage of the Culture Center." Ex. 30. The letter closes by stating that if the Hearing Examiner "believes less latitude is warranted than is proposed, the applicant is prepared to accept [the Hearing Examiner's] recommendations on maximum occupancy, as well as any reasonable steps to be taken to ensure those maximums are not exceeded." *Id.* As discussed in more detail in Part IV below, the Hearing Examiner finds that the proposed special exception can be considered compatible with the neighborhood only if the level and intensity of the on-site activities are kept at a modest level, in terms of both the frequency of events and the number of people involved. Moreover, given the historical use of the driveway for parking, there is a need to set clear limits on the number of vehicles and people to remove any incentive to park in the driveway illegally, or to park in the street. For all of these reasons, the Hearing Examiner has recommended conditions of approval that would restrict the number of weekend events during the course of a year, limit the number of vehicles on site at one time, and limit maximum site occupancy at weekend events to levels below those requested by the Petitioner: 30 people on site at one time at all weekend events other than the twice-annual open houses, and 60 people at one time at each open house (or such lower limits as may be permitted by the building and fire code).

#### ***D. Landscaping***

The subject site has grass, trees and other landscaping throughout. As shown on the site plan and aerial photographs, the property is surrounding on three sides (to the north, south and west) by evergreen perimeter landscaping in the form of Leland cypress trees. In all but one small

area, the trees are large enough to screen the property from view almost entirely. The Petitioner proposes to plant evergreen arborvitae bushes along most of the eastern property line, from a point even with the house next door, at the front of the site, to a point even with the edge of the parking lot at the rear. The Planning Board's recommendation for six-foot screening has been carried forward in the conditions of approval recommended at the end of this report, which would require the Petitioner to install plants that are six feet tall at the time of planting. With these plantings in place, virtually the entire site would be screened from view at ground level, except for the front yard and the small parking area in front of the house. As Petitioner's next-door neighbor to the east pointed out, no amount of screening could block the view of the rear parking lot from the upper floor of the adjacent house.

### ***E. Development Standards***

As shown in the table below, adapted from a supplemental submission by Technical Staff (Ex. 25), the existing building complies with all applicable development standards under the R-200 Zone and Section 59-G-2.42.

#### **Development Standards**

<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>
Minimum Net Lot Area	40,000 sq. ft. <sup>6</sup>	63,597 sq. ft. (1.46 acres)
Minimum Lot Width at Front Building Line	100 ft.	Approx. 225 ft.
Minimum Lot Width at Street Line	100 ft. <sup>7</sup>	Over 300 ft.
Minimum Setback from Street		
Needwood Road	40 ft. <sup>8</sup>	69 ft.
Redland Road	15 ft.	157 ft.
Minimum Side Yard Setback	12 ft. (sum of both sides 25 ft.)	36 ft. (sum well over 25 ft.)
Minimum Rear Yard Setback	30 ft.	Approx. 240 ft.
Maximum Building Height	50 ft.	One story (less than 35 ft.)
Maximum Lot Coverage	25 %	1.72 %

<sup>6</sup> Section 59-G-2.42(a) calls for twice the minimum required in the zone. In the R-200 Zone, that would be 20,000 square feet.

<sup>7</sup> Section 59-G-2.42(d) calls for twice the minimum required in the zone. In the R-200 Zone, that would be 25 feet.

<sup>8</sup> Technical Staff reported this requirement as 15 feet, but the Hearing Examiner reads Section 59-C-1.326(c) to require a minimum setback from Needwood Road of 40 feet, because the adjacent lot is in a residential zone and fronts on Needwood Road.

The parking facility and driveway are subject to additional development standards under Section 59-E-2.83, as shown in the table below. A special exception parking facility in a residential zone must be set back from the property lines by a distance not less than the front and rear building setbacks required in the zone, and twice the side building setback required in the zone. § 59-E-2.83(b).

### **Parking Lot Development Standards**

<b>Parking Lot Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>
Minimum Setback from Street		
Needwood Road	40 ft.	Approx. 300 ft.
Redland Road	15 ft.	Approx. 45 ft.
Minimum Side Yard Setback	24 ft. (sum of both sides 48 ft.)	Approx. 4 ft. (driveway and parking lot)
Minimum Rear Yard Setback	30 ft.	50 ft.
Screening	6 ft., fence or plantings	Evergreen shrubs proposed, six ft. at planting
Minimum Number of Parking Spaces	2 (2.5 spaces per 1,000 sq.ft. of floor area)	16 plus two handicapped-accessible

As noted earlier, the width between the driveway and the eastern property line varies from four feet to eight, and the corner of the parking lot closest to the driveway is also approximately four feet from the property line. The Petitioner has requested a waiver of the 24-foot side yard setback to allow the driveway and parking area to be maintained in their current locations.

The Board of Appeals has authority under Section 59-E-4.5 of the Zoning Ordinance to waive any requirement of Chapter 59 that is “not necessary to accomplish the objectives in Section 59-E-4.2.” These objectives are set forth below:

- (a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.
- (b) The safety of pedestrians and motorists within a parking facility.
- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.

The provision of appropriate lighting, if the parking is to be used after dark.

Technical Staff finds that with the installation of six-foot-tall evergreen vegetation and a turnaround area at the west end of the parking lot, all of the above objectives would be met: the adjacent property to the east would be reasonably protected from automobile glare, lights and fumes; pedestrians and motorists would be able to safely maneuver onto the site; parking spaces would be striped to provide safe and efficient parking and loading areas; adequate space would be provided for motorists to turn around and exit the facility; the existing Needwood Road entrance would be maintained; and lighting would be limited to existing, exterior residential lighting. See Ex. 19 at 10-11; Ex. 31. These conclusions were based on an assumption that there would be no more than 20 people on site at any one time, ensuring that the parking lot would not be overloaded. The Planning Board recommended granting the requested waivers, based on the same assumption. See Ex. 22.

The Hearing Examiner notes that under the proposed conditions of approval, all of the Center's activities would end before dark. Thus, there seems to be no need for parking lot lighting. For compatibility purposes, the parking lot should have been built farther from the eastern property line. As a small, non-profit organization, the Petitioner is reluctant to move the parking lot and driveway now. The Hearing Examiner agrees with Staff that if all of the proposed conditions of approval are implemented – including the limitations on the number of vehicles and people on site at one time – the parking facility can be found to satisfy the Zoning Ordinance's parking facilities plan objectives. This finding, however, is dependent on implementation of all of the recommended conditions of approval, and especially the limitations on the number, timing and intensity of events. If the special exception is granted but the Petitioner fails to comply with these limitations, more frequent or more intensive use of the parking lot could lead to adverse impacts sufficient to warrant revocation of the special exception.

Due to the importance in this case of scrupulous adherence to the recommended conditions of approval, the Hearing Examiner has included three recommended conditions that are designed to ensure careful scrutiny of the Petitioner's compliance: (i) that the Hearing Examiner be directed to convene a hearing each Fall for the next two years to receive a report from the Petitioner and evidence from any interested neighbors concerning compliance; (ii) that the Petitioner create a

Community Liaison Council composed of representatives of the Petitioner and members of the community, to meet three times a year to discuss any problems or compliance issues; and (iii) that the Petitioner be required to submit an annual report to the Board of Appeals in October of each year concerning compliance with the conditions of the special exception and describing the meetings of the Community Liaison Council. With these conditions in place, the Hearing Examiner finds it acceptable to grant the requested side setback waivers.

A special exception parking facility is required to be located so as to “maintain a residential character and a pedestrian-friendly street orientation.” Code § 59-E-2.83(a). Technical Staff did not directly address this requirement. The Hearing Examiner finds that the proposed site plan satisfies it, because the parking facility is not readily visible from the street, and would be even less visible with the additional landscaping shown on the Site Plan.

A special exception parking facility must have enough trees to shade at least 30 percent of the paved area, including driveways. Code § 59-E-2.83. Technical Staff noted that the facility is shaded by trees. See Ex. 19 at 9. The Hearing Examiner finds that existing and proposed vegetation along the eastern property line and trees in the interior of the site, near the parking lot, are sufficient to conclude that this requirement is met.

### ***F. Traffic and Environment***

Transportation Planning Staff at MNCPPC has determined that based on the Planning Board’s Local Area Transportation Review (“LATR”) Guidelines, the proposed use does not require a traffic study, because it would generate fewer than 30 trips during the morning and evening peak hours. Accordingly, the use would satisfy LATR requirements. See Transportation Planning Staff memorandum dated August 23, 2006, attached to original Staff Report, Ex. 19. This finding was based on a recommendation that regular weekday activities be limited to the hours of 10:00 a.m. to 3:00 p.m., which ensures that the proposed use would generate little or no traffic during the weekday peak periods. Transportation Staff further recommends that weekday movies during the summer months (June through August) be limited to one day per week, and end before 8:00 p.m. At other times of the

year, Transportation Planning Staff recommends that weekday movies end before 3:30 p.m. All of these recommendations are reflected in the conditions of approval recommended at the conclusion of this report.

Transportation Planning Staff further recommended that the use be limited to a maximum of 20 people on site at any one time, presumably to keep the number of people in line with the number of parking spaces. This recommendation has been carried forward with regard to weekday activities, consistent with the weekday-peak-period focus of transportation planning in this County. The Hearing Examiner finds that the recommended conditions allowing higher occupancy levels for weekend events do not undermine Transportation Planning Staff's conclusions, for two reasons: (1) higher weekend occupancy has no effect on the weekday peak periods that tend to be the focus of Transportation Planning Staff's analysis; and (2) the higher occupancy limits do not imply more vehicles, because they are accompanied by a prohibition of on-street parking and driveway parking as well as a limit of 16 vehicles on site at one time, plus two in the handicapped accessible spaces.

Transportation Planning Staff recommended the installation of a turnaround area at the western end of the parking facility. The Petitioner has not depicted a turnaround area on the site plan. However, as noted earlier, the testimony and written submissions indicate that the Petitioner understands that only 16 of the parking spaces in the rear parking lot may be used, with the remaining two spaces to be reserved as turnaround areas. This configuration may not be as convenient for drivers as a clear turnaround area at the end of the drive aisle, but the Hearing Examiner accepts Technical Staff's conclusion, in a post-hearing memorandum, that abandoning these two parking spaces for use as turnaround areas is acceptable. See Ex. 31. The recommended conditions of approval would require appropriate striping and signage to deter parking in these spaces.

Transportation Planning Staff concluded that with the recommended conditions, the proposed use would have no adverse effect on nearby roadway conditions or pedestrian facilities. The Hearing Examiner finds, for the reasons articulated above, that this conclusion is not undermined by the somewhat more generous conditions of approval recommended in this report.



The present petition is exempt from forest conservation requirements because it proposes no construction activities and no forest or individual trees would be disturbed. See Ex. 7. The project has a stormwater management waiver from the Department of Permitting Services, as reported by Environmental Planning Staff in its memorandum of August 17, 2006, attached to the original staff report, Ex. 19. Technical Staff notes that stormwater flows over a small swale to an off-site storm drain. See Ex. 24.

### ***G. Community Support***

The record contains a letter of support from Kenneth D. Weiss, a Derwood resident who reports that he has visited the subject site and believes the proposed use would be appropriate for the land and building in question. See Ex.18. Mr. Weiss believes the proposed use would have no significant adverse effect on its neighbors or others in the Derwood area. See *id.* Mr. Huang testified that he and others from the Center met with Mr. Weiss, who is the Vice President of the Park Overlook Citizens Association, and with its President, Carol Duvall, during July or August of 2006. The meeting took place at the subject site and lasted for about an hour and half. At the end of the meeting, Mr. Huang reports, Ms. Duvall said that she would raise the issue of the present petition with the Park Overlook Citizens Association at the next board meeting, which was to take place in October, after the hearing in this case. The record was held open for a time after the hearing, but no letter from the Park Overlook Citizens Association has been submitted.

### ***H. Opposition***

The adjacent neighbor to the east, Juan Rodriguez, testified in opposition to the proposed special exception, and several other neighbors wrote letters in opposition. The house on Mr. Rodriguez's property has been under construction for about ten years, and Mr. Rodriguez's brother lives in it. Mr. Rodriguez testified that he spends a great deal of time working at the house, and sees Mr. Huang pretty often. He stated that there are "a lot of cars" at the subject site on Saturdays and Sundays, although he did not give a direct response to the Hearing Examiner's request that he estimate

the number. Tr. at 78. Mr. Rodriguez noted that cars park 20 feet from his house, along the driveway, and he finds it very annoying. He stated that, for example, about two weeks before the hearing there were about ten cars, with three or four people in each. He said that a few times there have been big events at the Center, and people parked on his property and on the street.

Mr. Rodriguez acknowledged that Mr. Brown discussed with him the issue of trees v. fencing along the common property line, but Mr. Rodriguez did not agree to anything – he does not want to agree to anything because he does not want the Center next door. When pressed, Mr. Rodriguez indicated that he would prefer trees along the property line rather than a fence.

Mr. Rodriguez objects to the proposed special exception because he does not want to feel like he is in a commercial area, with a bunch of cars next door. From the family room at the top of his house, he will be able to see the back yard of the subject site no matter how tall the trees grow. Mr. Rodriguez also thinks it is somewhat dangerous to have a house that looks empty on the corner, with all those Leland cypress that someone could hide in. Sometimes, he says, kids park on the driveway at night. A few times Mr. Rodriguez parked his pick-up truck at the subject site at night, just to make it look like someone was there, to discourage people from coming onto the property. When the Hearing Examiner asked whether he would consider it helpful to have a chain installed across the driveway, to discourage nighttime visitors, Mr. Rodriguez thought that would be a good idea.

Mr. Rodriguez contended that Mr. Huang provided false information when he said that there are only 20 people at most events. Mr. Rodriguez maintained that there may be only 20 cars, but several people come in each car, or in vans.

Mr. Rodriguez, another person at the same address, and four other individuals signed a joint letter in opposition that states the following five grounds for opposition (see Ex. 26):

1. There is a substantial traffic flow on Needwood Road, and the presence of the Center would create a more dangerous traffic situation “by the numerous weekly meetings, especially on the weekends.”
2. The number of people who gather at the Center “by far exceeds the limit per household occupants. In the event of an emergency (fire) it will be extremely dangerous to evacuate so many people.”

3. The parking lot is much too small for the number of people who attend Center activities, resulting in participants parking on grassy areas of private property, and even blocking driveways.
4. The Center focuses on people who do not live in the neighborhood and activities that do not benefit the neighbors.
5. The Center meetings are very frequent and the numerous activities create a lot of noise, as the homes are close to each other.

Most of the concerns raised by Mr. Rodriguez and his neighbors are addressed by the recommended conditions, which would strictly limit the number of vehicles and people on site, and the number of events. One issue that cannot be addressed effectively with conditions is number (4) above. Mr. Huang denied this contention, stating that some members do live in the area, and that the Center's programs would benefit the neighbors if they were to attend.

The Hearing Examiner proposes to address Mr. Rodriguez's concern about nighttime trespasses by recommending that the Board reserve jurisdiction to require a chain across the driveway if warranted by future evidence.

Christopher Palamara, who resides at 7509 Needwood Road, opposes the proposed special exception because he is "dead set against any residential property being used for anything other than a single family residence." Ex. 33. This sentiment, while undoubtedly sincere, is not persuasive in the context of the special exception provisions of the Zoning Ordinance, which permit many non-residential uses in residential neighborhoods. This reflects a policy decision by the County Council to permit non-residential uses in residential neighborhoods, provided that pre-determined standards are satisfied.

William P. Yeatman, who lives at 16228 Deer Lake Road, about a block and a half from the subject property, opposes the proposed special exception on several grounds. See Ex. 32. He does not believe the Petitioner's representations that it was unaware of the need for a special exception when it purchased the property, and believes that even if the claim of ignorance were true, the Petitioner should not be rewarded for its unlawful action by receiving approval of the special exception. Mr. Yeatman observes that traffic has increased on Needwood Road in the last ten years, especially

after the installation of a traffic light on Muncaster Mill Road. He argues that permitting a use that would result in 40 or more cars emerging from a residential driveway so close to the traffic light at Redland Road would be a “traffic disaster.” Mr. Yeatman also questions how the number of cars on the site would be monitored, finding it disingenuous of the County to suggest that the number of cars and people on the site would be controlled by a log maintained by the Center. The Hearing Examiner notes that it has long been County policy to allow an applicant who otherwise satisfies applicable standards to obtain a special exception, even if the use has previously operated illegally. Moreover, the conditions of approval recommended in this report go well beyond a visitors’ log in establishing measures to enforce the occupancy limits.

Mr. Yeatman notes that last May he received a “Hi, Neighbor” letter from the interim pastor of the Taiwanese Presbyterian Church of Washington, who mentioned a new sanctuary site on Needwood Road. Mr. Yeatman suggests that the present special exception application may be just a precursor to the establishment of a sanctuary and worship center on the subject site. [There is no evidence in the record to substantiate this claim. Moreover, places of worship are permitted very liberally in this County, so there would be no reason to go through a special exception process if the end goal were to establish a church on the subject site.]

The most lengthy and substantive opposition submission is a memorandum dated March 13, 2006, from Carol L. Kosary and Paul S. Posey, who live at 7416 Needwood Road. See Ex. 14. Ms. Kosary and Mr. Posey first laid out their knowledge of the Center’s history at this site. They stated that the Petitioner purchased the property in December 2003 and immediately started converting it from residential use to organization headquarters. This included demolishing a garage, which led to a fire that required fire department assistance. [Mr. Huang denied that there was a fire during the demolition. The Hearing Examiner notes that whether there was a fire or not is not directly relevant to the legal issues at hand.] It also involved installing a paved parking lot, with spaces marked out for 40 cars [this would be consistent with the combined number of spaces in the parking lot and along the driveway], and placing a sign at the street announcing the organization name and hours of operation. Ms. Kosary

and Mr. Posey allege that the group “then proceeded to host gatherings of participants in numbers which filled their parking lot and overflowed onto Needwood Road.” Ex. 14. [Mr. Huang contends that parking on Needwood Road occurred only once, at the first open house, before the parking lot had been built.]

Ms. Kosary and Mr. Posey report that they, with others in the neighborhood, started complaining to the County in early Spring, 2004. They maintain that the Petitioner was informed in the Spring of 2004 that a special exception was required, and chose to ignore the issue until the County finally issued two fines and set a court date in early Fall, 2005. Ms. Kosary and Mr. Posey question whether the Petitioner was actually unaware of the requirement for a special exception, since it was knowledgeable enough to have the property taken from the tax rolls immediately after its purchase. [Mr. Huang’s testimony confirms that the property was taken from the tax rolls soon after its purchase. He acknowledged that there was, for a brief period, an identification sign at the front of the property, which was installed to support the application for tax-exempt status. Once that application had been approved, Mr. Huang testified, he took down the sign because the neighbors did not like it. Tr. at 64.]

Ms. Kosary and Mr. Posey raise a number of specific questions about the application, in addition to the general concerns raised in their chronology. They assert that the Petitioner created a 40-space parking lot and is now requesting approval for 19 parking spaces, and ask whether the Petitioner will be required to remove part of the parking lot to get down to that number. They are, perhaps, unaware that more than half of the parking spaces originally marked off were in the driveway. Those parking space demarcations have been removed, and if the special exception is approved, “No Parking in Driveway” signs will have to be posted along the driveway.

Ms. Kosary and Mr. Posey suggest that the septic system for the property will not be able to handle the increased use, and that the parking lot may have been built on top of the septic field. Mr. Huang, who is a professional engineer, testified that the parking lot is not on top of the septic field, and that even if it were, it would not interfere with the function of the septic field. Tr. at 68-70.

Ms. Kosary and Mr. Posey contend that the subject property is in the RE-1 Zone, “like most of the properties along this area of Needwood Rd,” and therefore the side setback requirement for the parking lot and driveway is 34 feet, not 24 feet. This contention is not factually based. As shown on the zoning map on page 10, properties on the north side of this section of Needwood Road are classified under the R-200 Zone, and properties on the south side of the road are in the RE-2 Zone.

Ms. Kosary and Mr. Posey question whether the Petitioner should be applying as a “charitable organization,” rather than a “service organization.” They note that the Center has been an IRS-qualified, tax-exempt charity since March, 2001, and suggest that this requires the Center to be considered a “charitable organization” under the Montgomery County Zoning Ordinance. As Ms. Kosary and Mr. Posey correctly observe, the specific conditions that must be satisfied to obtain a “charitable organization” special exception are much more specific and demanding than those for a “service organization.” *Compare* Code §§ 59-G-2.42 and 2.21.

The special exception category sought by the Petitioner is entitled “Private clubs and service organizations.” See Code § 59-G-2.42. The Zoning Ordinance defines these terms as set forth below (Code § 59-A-1.2):

**Private club:** An incorporated or unincorporated association for civic, social, cultural, religious, literary, political, recreational or like activities, operated for the benefit of its members and not open to the general public. A private club is not a commercial recreational establishment.

**Service organization:** Any nonprofit organization the services of which are devoted entirely to the betterment or improvement of the community in which it is located, including Lions, Kiwanis, Rotary, Optimists, Civitans and like organizations.

The special exception category that Ms. Kosary and Mr. Posey contend is more appropriate to the proposed use is “Charitable or philanthropic institution”. See Code § 59-G-2.21. The Zoning Ordinance defines this term as follows (Code § 59-A-1.2):

**Charitable or philanthropic institution:** (Formerly “eleemosynary or philanthropic institutions.”) A private, tax-exempt organization whose primary function is to provide either health, social, recreational, religious, or benevolent services, or research or educational activities in areas of benefit to the public such as health, medicine or conservation of natural resources. An organization for the purpose of operating a trade or business or whose primary purpose or function is promoting the economic advancement of its members, such as a professional or trade association or a labor

union, is not a charitable or philanthropic institution for zoning purposes. This definition also does not include other uses specifically defined or regulated in this ordinance such as a: place of worship, public or private educational institution, library, museum, community building, private club or service organization, hospice care facility, hospital, nursing home, domiciliary care home, group home, or housing and related facilities for senior adults or persons with disabilities.

The Petitioner argues that the Center is appropriately classified under Section 59-G-2.42 because the special exception category comprises both private clubs and service organizations, and the Center's operations include elements of both. The Center does have members, although many of its activities are open to the public, such as the open houses and the annual musical concert. The Center's purpose, as stated in the Petitioner's corporate by-laws, is to:

enhance the strength of the Taiwanese and Taiwanese-American culture among the members, to promote and facilitate mutual understanding between the Taiwanese culture and other cultures in the United States, to engage in social, cultural, educational, and other related activities, and to establish a center for the conduct of such activities by the members and the public.

Ex. 3(a) at 1. This purpose, in the Hearing Examiner's view, demonstrates an intention to engage in activities that are designed to improve the local community by increasing cross-cultural understanding, which is an important issue in today's multicultural Montgomery County. The Center's activities to date have included educational activities, such as a seminar on the benefits of recycling, and a health screening service, which was offered at an open house and was available to any members of the public who attended the event. The Center also promotes education and cross-cultural understanding by awarding college scholarships to both Taiwanese-American and non-Taiwanese-American high school students.

The Petitioner's by-laws provide that the Center shall operate exclusively for charitable, cultural and educational purposes as a section 501(c)(3) organization. This, however, does not appear on its face to be inconsistent with being a "service organization," as defined in the Zoning Ordinance. Moreover, the Center's primary function is not to provide any of the types of services listed in the "charitable organization" definition – health, social, recreational, religious, or benevolent services, or research or educational activities. Its primary function is to promote cross-cultural understanding in a variety of ways. In the Hearing Examiner's view, the Center's activities fit more closely into the Zoning

Ordinance's description of a "service organization," which works towards the betterment of the community, than any other use defined therein.

### **III. SUMMARY OF HEARING**

#### ***A. Petitioner's Case in Chief***

Tai L. Huang, President of Taiwan Culture Center Inc. and Chairman of its Board of Directors, was the only witness on the Petitioner's behalf. Mr. Huang came to the United States from Taiwan as a graduate student in engineering, received a PhD. in 1970, and has worked as a professional engineer in the United States since then. He testified that a large number of professional people from Taiwan have settled in the Washington D.C. Metropolitan Area, and that some of them felt that it would be valuable to establish a Taiwan Culture Center, to help foster cross-cultural understanding between Americans and Taiwanese. Tr. at 10. For a number of years there was an organization called the Taiwanese American Association, which was a local chapter of a national organization by the same name. Tr. at 18. In 1999, the local chapter was found to be large enough to become independent, and the current Taiwan Culture Center, Inc. was formed. The organization spent several years searching for a headquarters location. In December 2003, a former member of the Taiwanese American Association offered to sell the subject site to the Taiwan Culture Center, Inc. *Id.* at 19.

Mr. Huang stated that when the Petitioner acquired the subject property, the organization was not aware that a special exception was required to operate at this location. Tr. at 23-24. They learned that a special exception was necessary when an inspector contacted them in May, 2005, in response to complaints from neighbors. Tr. at 24. Mr. Huang stated that up to that time, the Petitioner had almost no activity on the site. They received a citation on September 22, 2005, which is when they were directed to apply for a special exception, so that's when they hired counsel and started working on the application, which was filed a few months later.

Mr. Huang stated that every year since 1996, his organization has hosted an event called "Music from Taiwan," featuring performances of music by Taiwanese composers, with the idea



that starting with the music, people will be able to understand Taiwanese culture. Tr. at 11-12. This event has been held at different places in the metropolitan area each year, generally in a high school auditorium. Tr. at 11-12, 16-17.

Mr. Huang described the Petitioner's community service activities. The Petitioner offered a health screening program in 2005, at the subject site, where volunteer doctors gave guidance and referrals. This program was open to all, not just members of the organization or Taiwanese-Americans. Mr. Huang states that the event was advertised on their web site and in the local newspaper. He stated that at first, people are not aware of it, but he expects that people who attend will tell their friends, and more people will come. Mr. Huang stated that when they expect more people, the organization will not hold this event at the subject site. They will use another location, like they do for their annual musical presentation, which draws more and more non-Taiwanese-Americans every year. Tr. at 17. The Petitioner also offered a presentation about recycling at one of its seminars, to teach attendees about the importance of recycling to the environment. In addition, the organization sponsors a college scholarship program for high school seniors in the metropolitan area. The application has three requirements related to academics, community service and other activities. The Petitioner started this program two years ago, and each year has awarded ten scholarships, five in Virginia and five in Montgomery County. The scholarships are offered in schools that are located in areas with a significant Taiwanese-American population, but they are open to all students. Mr. Huang indicated that in the first two years, the scholarships recipients have been mixed between Taiwanese-American students and students who are not Taiwanese-American. Tr. at 15.

When asked whether he has any difficulty or problem with the conditions recommended by the Planning Board, Mr. Huang's first answer was that he has no problem at all. Tr. at 20. When asked more specifically, by the Hearing Examiner, how the recommended limitation of 20 people on site at one time would work with the open house events, Mr. Huang stated that "The open house is outside, you know, open house in summer. It will be more people, it's outside in the picnic area." When the Hearing Examiner explained that the Technical Staff's proposed 20-person limit did not distinguish

between outdoor and indoor activities, Mr. Huang suggested that the Petitioner can split up the open house into time periods, with some people coming during one hour and others during a different hour.

Mr. Huang presented a written chronology of events hosted by the Petitioner, and described some of them. He stated that the first event at the subject site was an open house in January 2004. After that, they started cleaning up the site during the Spring and Summer of 2004. There was a three-car garage full of junk, which they cleared out and demolished. They created, instead, a paved parking area. They brought in top soil and seeded the back, and had the trees trimmed.

Mr. Huang stated that there were more than 20 people in attendance at the next open house, which took place in August 2005. Tr. at 27-28. For the other activities listed on the chronology, he stated that less than 20 people attended. Tr. at 28.

Mr. Huang reviewed a series of photographs of the subject property, which show the entrance to the house, the driveway, the back yard and the neighboring property. He acknowledged that in an aerial photograph submitted by Technical Staff, the driveway (which is quite wide) is painted with stripes that demarcate parallel parking spaces. He represented, however, that the day before the hearing the Petitioner had those stripes painted over with tar, to show that parking is not permitted along the driveway.

In response to a question about the Planning Board's recommendation that the Petitioner add a turnaround area at the end of the parking lot, Mr. Huang stated that the parking area is wide enough for cars to turn around – "30, 40, 60 feet from one side to the other." Tr. at 33-34.

Mr. Huang reviewed a floor plan of the house on the subject property, which shows an entrance hall on the main floor, together with a computer room, a meeting room, a library, an office and a bathroom. In the basement, the floor plan shows a kitchen and another meeting room, as well as a guest suite. Mr. Huang explained that the guest suite is used occasionally for a speaker who comes from out of town, or other outside visitors who may stay "a few days or weeks" on a temporary basis.

Tr. at 45-46. Mr. Huang displayed photographs taken during some of the Petitioner's activities, which show only a small number of people in attendance, perhaps 10 or 15. Tr. at 47.

Mr. Huang observed that any activities taking place in the back yard of the subject property are not visible from the neighboring roads due to a row of Leland cypress evergreens along the road frontages. Tr. at 49. People on the site can hear the traffic, but cannot see it. Mr. Huang acknowledged, as shown in some of the photographs, that there is one open spot in the perimeter landscaping along Redland Road, but he stated that the trees in that location are small, and will quickly grow and fill in that space. The Petitioner has not planted any trees so far, but will in the future if some of the trees are not growing well. Tr. at 51.

Turning to the site plan itself, which Mr. Huang prepared, Mr. Huang testified that the distance from the driveway to the nearest property line is about eight feet at the front of the property, near Needwood Road, then it narrows to six feet in the middle and four feet at the end of the driveway. The space between the driveway and the property line, Mr. Huang, noted is planted with grass. Mr. Huang confirmed that the Petitioner seeks a waiver of the 24-foot side yard setback that normally would apply to the driveway. Tr. at 54. He represented that the Petitioner is willing to install screening along the property line in the form of either a fence or plantings, whichever the adjoining neighbor prefers. Mr. Huang stated that the adjoining neighbor, Juan Rodriguez (who testified in opposition), had stated a preference for trees. Mr. Huang then presented an information sheet prepared by a local nursery recommending arborvitae, a large evergreen shrub, for that area. Mr. Huang testified that the nursery employee who assisted him advised him that arborvitae would thrive in the space available between the driveway and the property line. Tr. at 57-58. Mr. Huang suggested that the Petitioner would plant these evergreens along the parts of the driveway where there currently are no trees; the Hearing Examiner informed him that if the special exception is approved, the Petitioner likely will be required to install plantings along the entire length of the driveway.

In response to complaints from neighbors about large crowds and lots of cars at the subject site, Mr. Huang stated that there were a lot of people at the first open house, in January 2004,

and some parked on Needwood Road because there was very limited parking on the site. Since then, however, the Petitioner has built a parking area, so there has been no parking on the street. Tr. at 22-23. In fact, Mr. Huang noted, the neighbor across the street has asked to use the Petitioner's parking lot on more than one occasion. Tr. at 23.

Mr. Huang responded to a series of allegations stated in a memorandum (Exhibit 14) from neighbors Carol L. Kosary and Paul S. Posey, who reside at 7416 Needwood Road.<sup>9</sup> He contested their allegation that when the old garage was demolished, a fire started that required the assistance of the fire department. Tr. at 64. He stated that he was present during the demolition process, and there was no fire. *Id.*

With regard to the allegation by Ms. Kosary and Mr. Posey that there was, at one point, a sign near the road advertising the Center, Mr. Huang stated that he put up a sign briefly, to get approval from the County for tax-exempt status. People complained, so he took it down. Tr. at 64. Mr. Huang denied the allegation that the Petitioner's members knew they needed a special exception as early as Spring 2004. He maintained that he first learned of the problem in May 2005. Tr. at 65-66. Mr. Huang forcefully denied Ms. Kosary and Mr. Posey's allegations that the Petitioner repeatedly ignored warnings from the County about improper use of the property, and has no regard for either the neighborhood or county regulations. Tr. at 66. He stated that he has talked to the neighbors to see if they have concerns, and if there is a problem he always discusses it with them. He noted that the Petitioner has allowed a neighbor across Needwood Road to use their parking lot, at least two times.

Ms. Kosary and Mr. Posey also raised a concern about whether the parking lot the Petitioner installed would cause the property's septic system to fail. Mr. Huang testified that he has professional experience with septic systems, and that septic fields must be about ten feet below ground. They are covered with up to three feet of gravel, two feet wide. Mr. Huang stated that a parking lot can safely be built on top of a septic field, because its base extends only about a foot below

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<sup>9</sup> Google Maps indicates that 7509 Needwood Road is about one and a half blocks east of the subject site, near the intersection of Needwood Road and Deer Lake Road.

ground. He noted, moreover, that the septic field on the subject property is not underneath the parking lot.

Mr. Huang rejected the contention made by some of the neighbors that the proposed special exception would create a dangerous traffic situation on the neighboring roads. He noted that the subject property has no access point onto Redland Road, and therefore would not affect it. With regard to Needwood Road, he noted that the Center's activities do not take place during the weekday rush hour, when traffic gets heavy. Mr. Huang stated that he is familiar with the local traffic patterns in the area of the site, because he stops by several times a month to see that everything is okay. On weekends, he finds traffic to be pretty light. After 4:00 on weekdays, people use Needwood Road as a short-cut, and he expects they do the same during the morning rush hour. Mr. Huang stated that the Center has no impact on rush hour traffic because of the timing of its activities, and that, in any event, traffic flow at the intersection is controlled by a traffic light. He acknowledged that traffic sometimes backs up on Needwood Road past the entrance to the subject site, but stated that people always let in a car exiting the site. He does not recall seeing traffic backed up that far after 10:00 in the morning.

A group of neighbors argued that the number of people using the Center facility would create a fire hazard. Mr. Huang noted that Meeting Room 2 is adjacent to a door to the outside, and estimated that Meeting Room 1 is about 12 feet from an exterior door. The recommended conditions of approval limit occupancy to the maximum permitted by the Fire Code.

Mr. Huang considers the 16-space parking lot adequate, because most of the Center's activities draw less than 16 people, and no more than ten cars. Tr. at 74. He noted that the Petitioner intends to use the front parking area, near the house, for handicapped-accessible parking and deliveries.

Opposition neighbors also argue that the Center focuses on people who do not live in the neighborhood and activities that do not benefit the neighbors. Mr. Huang disagreed. He maintained that the Center has many families in the neighborhood, and that if people were to attend a

function at the Center, they would understand the benefits provided to people in the neighborhood, such as learning about recycling or getting a health screening.

Mr. Huang rejected the contention that meetings at the Center are very frequent and create a lot of noise because the homes are close together. He stated that activities are neither frequent nor noisy, and that it is ridiculous to suggest that neighbors could hear the noise created by an indoor meeting over the traffic noise from Needwood and Redland Roads. Tr. at 76.

Turning to other matters, Mr. Huang testified that currently, the Petitioner has one sign on the subject site, on the right side of the door, which identifies the building as the Taiwan Culture Center. If the special exception is approved, the Petitioner intends to put up an additional identification sign, on the mailbox. Tr. at 94-95. He stated that the Center already keeps a record of who attends its activities, and will continue to do so. Tr. at 106.

In reference to a letter of support from Kenneth Weiss (Exhibit 18), Mr. Huang explained that representatives of the Center and their counsel met with Mr. Weiss and Carroll Duvall, Vice President and President, respectively, of the Park Overlook Citizens Association, during the summer of 2006. Tr. at 96-97. The meeting took place at the subject site, and lasted for about one and a half to two hours. Ms. Duvall said that she would discuss the subject petition with the Board of Directors of her organization at the next meeting, which was to be after the date of this hearing.

In response to questioning by the Hearing Examiner about functions on morning weekends, Mr. Huang stated that sometimes the Board of Directors, which has nine members, meets at 9:00 or 10:00 on a week-end morning. The Board of Directors meets every three months.

The Hearing Examiner asked Mr. Huang how the Center would hold an open house with a limit of 20 people on site at one time. He stated that they would have to give out timed tickets, to limit the number of people during each hour of the open house. Tr. at 111. Tickets would be mailed to members, meaning those who make a contribution to the Center. He acknowledged that this process would only be able to control the arrival times of members – it would not affect the arrivals of members of the public who attend in response to a newspaper advertisement. The Hearing Examiner concluded,

from this discussion, that a limit of 20 people on site at one time is not realistic for the open house events as described, since they are open to the public. The Hearing Examiner suggested that the Petitioner submit a statement, after the hearing, outlining a more realistic attendance level for which permission may be requested in connection with the proposed special exception. See discussion in Part II.C. above.

### ***B. Opposition***

The only opposition witness was Juan Rodriguez, who owns the house abutting the subject site to the east, at 7505 Needwood Road. The house has been under construction for about ten years, and Mr. Rodriguez's brother lives in it. Mr. Rodriguez testified that he spends a great deal of time working at the house, and sees Mr. Huang pretty often. He stated that there are "a lot of cars" at the subject site on Saturdays and Sundays, although he did not give a direct response to the Hearing Examiner's request that he estimate the number. Tr. at 78. Mr. Rodriguez noted that cars park 20 feet from his house, along the driveway, and he finds it very annoying. He stated that, for example, about two weeks before the hearing there were about ten cars, with three or four people in each. He said that a few times there have been big events at the Center, and people parked on his property and on the street.

Mr. Rodriguez acknowledged that Mr. Brown discussed with him the issue of trees v. fencing along the common property line, but Mr. Rodriguez did not agree to anything – he does not want to agree with anything because he does not want the Center next door. He does not want to feel like he is in a commercial area, with a bunch of cars next door. From the family room at the top of his house, he would be able to see the back yard of the subject site – and the parking lot – no matter how tall the trees grow.

Mr. Rodriguez also thinks it is somewhat dangerous to have a house that looks empty on that corner, with all those Leland cypress that someone could hide in. Sometimes, he says, people park on the driveway at night, kids hanging out. A few times Mr. Rodriguez parked his pick-up truck at the subject site at night, just to make it look like someone was there, to discourage people from coming

onto the property. When the Hearing Examiner asked whether he would consider it helpful to have a chain installed across the driveway, to discourage nighttime visitors, Mr. Rodriguez thought that would be a good idea.

Mr. Rodriguez contended that Mr. Huang provided false information when he said that there are only 20 people at most events. Mr. Rodriguez maintained that there may be only 20 cars, but several people come in each car, or in vans.

When pressed, Mr. Rodriguez stated that if the special exception is approved, he would prefer to have trees along the eastern property line, rather than a fence. Tr. at 90.

### ***C. Petitioner's Rebuttal***

Mr. Huang voiced surprise that Mr. Rodriguez would complain about noise from cars, because of the noise from construction vehicles and related activities on Mr. Rodriguez's property. Tr. at 99. Mr. Huang stated that Mr. Rodriguez is running a business out of his property, so he should not have any complaints about the proposed special exception. He stressed that the Center's activities are quiet, mostly professional people talking quietly, nothing loud. Mr. Huang said that Mr. Rodriguez is wrong about the number of cars on the site, that there are less than 20 cars except for the open house days.

Mr. Huang did not like the idea of putting a chain across the driveway to deter nighttime visitors. He thought it could be hazardous, if it prevented cars from coming fully off the road before stopping to unlock the chain. Mr. Huang stated that Mr. Rodriguez had told him once about kids coming onto the property, but that was the only time. Petitioner's counsel suggested that the Board retain jurisdiction to require such a chain in the future, if additional evidence suggests that it is warranted. Tr. at 105.

## **IV. CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special



exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

### ***A. Standard for Evaluation***

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private club or service organization. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff did not identify inherent characteristics of a private club or service organization, although the Staff Report did find that the inherent adverse effects of the use proposed in this case include the building and traffic associated with the movement of volunteers and function attendees. See Staff Report at 12. The Hearing Examiner finds that physical and operational characteristics necessarily associated with a private club or service organization include a structure large enough to accommodate the indoor activities of the organization; sufficient parking to accommodate members of the organization and event attendees; adequate exterior lighting if nighttime events are planned; vehicular trips to and from the site; activities that may take place during evening or weekend hours, to accommodate volunteers and members of the public, as well as during normal business hours; and gatherings of groups of people to engage in activities related to the purpose of the organization. In the present case, with the proposed conditions of approval, none of the operational elements should be considered non-inherent characteristics, given that the hours of operation and number and intensity of activities would be quite modest. Little impact should be expected on traffic, given that the evidence suggests the most significant traffic problems take place during the weekday peak periods, and the Center does not propose to offer any activities that would generate traffic during those periods.

The structure in which most Center activities would take place is modest in size and residential in appearance, which supports a finding that it should be considered an inherent characteristic. The need for substantial waivers of the side setback requirements for the driveway and parking lot is neither typical nor to be expected, and therefore must be considered a non-inherent characteristic. The potential adverse effects of the location of the parking lot and the driveway would be mitigated, however, by the Petitioner's commitment to plant large evergreens along the entire driveway. Moreover, parking would be prohibited in the driveway, reducing its adverse effects. For these reasons, with the limitations on occupancy and number of vehicles contained in the proposed conditions of approval, the Hearing Examiner concludes that the location of the parking lot and driveway do not constitute a non-inherent adverse effect sufficient to warrant denial of the special exception.

The Hearing Examiner would consider the size of the parking lot to be a non-inherent adverse effect if the evidence indicated, as suggested by some of the neighbors, that the parking lot is too small to accommodate the number of vehicles coming to the site. The evidence suggests that on one occasion, before the parking lot was built, visitors to the first open house at the site parked on the street, causing annoyance and adverse impacts to the neighbors. However, the allegations by neighbors regarding off-site parking are too vague to outweigh the specific testimony of Mr. Huang that large-scale, on-street parking has happened only once since the Petitioner purchased the property. The number of attendees for which the Petitioner has requested approval calls into question the sufficiency of the parking lot; 80 attendees at one time, or even 60, requires a very high per-vehicle occupancy to use only 16 parking spaces (plus two handicapped-accessible spaces). With the proposed conditions of approval, however, site occupancy would be limited to 30 people at a time, except for the twice-annual open houses, at which 60 people would be permitted at one time. Thus, the risk of parking overflow is limited to two days per year. The Petitioner has committed to reduce this risk by distributing timed tickets for the open houses and encouraging car-pooling. Moreover, events with more than 20 people permitted at one time (other than the open houses) would be limited to once a month. For all of these reasons, the Hearing Examiner concludes that with the recommended conditions of approval, the size of the parking lot should not be considered a non-inherent characteristic of the use.

If the Petitioner requests of the Board that any of the recommended conditions of approval be modified to expand the occupancy limits, the Hearing Examiner urges the Board to consider whether such a modification would make the parking lot insufficient in size, turning it into a non-inherent adverse effect that could be sufficient to warrant denial of the petition. Similarly, if the Petitioner requests modification of conditions related to the frequency of events, the Hearing Examiner urges the Board to consider whether the intensity of use requested would impose adverse effects which, together with the non-inherent adverse effects of the proximity of the parking lot and driveway to

the eastern property line, are sufficient to warrant denial. The Hearing Examiner's recommendation of approval in this case depends heavily on close adherence to the recommended conditions of approval.

No unusual site conditions exist that should be considered non-inherent adverse effects. On the contrary, the principal unusual site condition is a corner location at the intersection of two relatively busy streets, which reduces the number of homes likely to be affected by the proposed use.

Based on the preponderance of the evidence, the Hearing Examiner concludes that the present proposal includes no non-inherent adverse effects that warrant denial.

### ***B. Specific Standards***

The specific standards for a private club or service organization are found in §59-G-2.42. The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence to support a conclusion that, with the recommended conditions of approval, the proposed facility would be consistent with these specific standards, as outlined below.

#### **Sec. 59-G-2.42. Private clubs and service organization.**

A private club or service organization, including a community building, must meet the following standards:

- (a) Lot size: Twice the minimum required in the zone, up to a maximum of 3 acres.

Conclusion: The subject property measures 63,597 square feet, which is more than twice the 20,000-square-foot minimum of the R-200 Zone.

- (b) Maximum building coverage: 15% up to a maximum building coverage, including accessory buildings, of 20,000 square feet.

Conclusion: The Petitioner proposes a building coverage of 1.72 percent, far less than 20,000 square feet.

- (c) Green area: 50%

Conclusion: The proposed site plan provides for 81 percent green area.

- (d) Frontage: Twice the minimum required in the zone.

Conclusion: The subject site has more than 300 feet of street frontage, which is three times the minimum of 100 feet required in the R-200 Zone.

- (e) Parking: 2.5 spaces per each 1,000 square feet of floor area.

Conclusion: The Petitioner proposes to maintain its existing parking lot, which has 16 spaces, plus two handicapped-accessible spaces in a separate parking area near the front of the house.

### ***C. General Standards***

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence that, with the recommended conditions of approval, the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General conditions:**

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

Conclusion: A service organization is a permitted use in the R-200 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.42, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a

particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports a conclusion that the proposed use would be consistent with the *2004 Upper Rock Creek Area Master Plan*. The Master Plan makes no specific recommendations for the site or this part of the planning area, but it recommends the site for continued R-200 zoning, which permits a private club or service organization by special exception. With the conditions of approval recommended in this report, the Hearing Examiner agrees with Technical Staff's conclusion that the low-intensity use proposed in this case would be in keeping with a primary objective of the Master Plan to maintain the residential wedge character of this portion of the County.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: With the recommended conditions of approval, the proposed use would add only moderately to population density in the neighborhood, and would bring large crowds to the area only twice a year, for a few hours. The Petitioner proposes no exterior changes to the existing structure, which is a building of modest size, especially compared to the large home under construction next door and several other large homes in the immediate vicinity. With the recommended conditions of approval, the intensity and character of activity would be modest: weekday events generally between 10:00 a.m. and 3:00 p.m., with no more than 20 people, plus movies one day per week ending before 3:30 September to May, and before 8:00 p.m. June through August; monthly weekend events with no more than 30 people; and twice-annual open houses with no more than 60 people on site at one time. Because virtually all of its activities would take place outside the weekday peak periods, the proposed use would have a negligible impact on traffic conditions in the area (the only activities that might generate weekday peak period traffic are summer movies, which the evidence indicates attract a very small number of viewers). Moreover, the prohibition of street parking and parking in the driveway at all events, together with the limitation of no more than 16

vehicles on site, plus two handicapped-accessible vehicles, ensures that even during somewhat larger weekend events, the number of trips to and from the site would be fairly small.

The two open houses can be expected to generate more noticeable levels of traffic, with some cars leaving and others arriving during the course of the event, but the Hearing Examiner considers this potential imposition on the neighbors to be acceptable, given that it would take place only twice a year. Moreover, as long as the size of the open houses remains at a level that is appropriate for the site and the neighborhood, a limited number of such gatherings should be considered an inherent characteristic of the use. Finally, compliance with the prohibition of street parking and parking in the driveway at all events, together with the limitation of no more than 16 vehicles on site (plus two handicapped-accessible vehicles), should prevent any adverse impacts due to parking overflow. If the parking is contained to the on-site facility, which would be fully screened on all sides, no adverse impacts on the neighbors should be expected, other than Mr. Rodriguez's annoyance at seeing the parking lot from his upstairs window. The Hearing Examiner considers the visibility of the parking lot from a second-story window to be an inherent characteristic – any use of this type can be expected to have a parking area of some kind, which would necessarily be visible from a taller structure, regardless of how good the ground-level screening may be. To deny the requested special exception on this basis would be tantamount to saying that a service organization cannot locate adjacent to any residential dwelling with more than one story.

For all of the above reasons, the Hearing Examiner concludes that with strict adherence to the recommended conditions of approval, the proposed use would be in harmony with the general character of the neighborhood. As noted earlier, this conclusion depends heavily on strict adherence to the recommended conditions of approval. Accordingly, the Hearing Examiner has recommended conditions of approval that are designed to provide close oversight of the Petitioner's compliance through follow-up hearings, a Community Liaison Council and annual reports to the Board.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood

at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with strict adherence to the recommended conditions of approval, the proposed use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, due to its moderate levels of activity, limited outdoor activities and significant landscape buffering.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with strict adherence to the recommended conditions of approval, the modest level of activity generated would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff reports that there are other special exceptions in the general neighborhood, mostly accessory apartments, but concludes that the addition of the use proposed here would not lead to adverse impacts on the area. Research by OZAH staff indicates that there is one accessory apartment in the general neighborhood and one private riding stable. (A former riding stable special exception was abandoned, and a 1966 application for a private club with 250 members and 40 to 50 events per year was denied.) In light of the moderate intensity of activity involved in this application, the Hearing Examiner concludes that with strict adherence to the recommended conditions of approval, the proposed use would not increase the number, intensity, or



scope of special exception uses in the area sufficiently to affect the area adversely or alter its predominantly residential character.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions of approval, the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property is not served by public sewer, but would continue to be served by other adequate public facilities with the proposed use.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would not be required. The proposed use would generate far fewer than 30 vehicular trips during the weekday peak hours, so it is not subject to Local Area Transportation Review requirements. Policy Area Transportation Review requirements no longer apply, per the current AGP Policy Element.

- (2) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The preponderance of the evidence supports a conclusion that with strict adherence to the recommended conditions of approval, the proposed use would have no adverse effect on the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The record substantiates a finding that Petitioner has met the burden of proof and persuasion.

#### **59-G-1.23 General Development Standards**

Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, applicable parking requirements under Article 59-E, forest conservation requirements under Chapter 22A, and sign regulations under Article 59-F; must incorporate glare and spill light control devices to minimize glare and light trespass; and may not have lighting levels along the side and rear lot lines exceeding 0.1 foot candles. Furthermore, under Section 59-G-1.23(g), any structure constructed under a special exception in a residential zone “must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.” Under Section 59-G-1.26, a structure constructed pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted, and must have suitable landscaping, streetscaping, pedestrian circulation and screening.

Conclusion: As shown in the table on page 20, the proposed development would satisfy all applicable development standards of the R-200 Zone. As discussed on pages 21-23 above, the Hearing Examiner, the Planning Board and Technical Staff recommend granting the requested waivers from the side setback requirements for the parking lot and the driveway. The proposed development is exempt from forest conservation requirements because it would not result in clearing any existing forest or trees. See Ex. 7. Only modest signage is proposed, and a recommended condition of approval would require that such signage be in compliance with Article 59-F. No changes are proposed to existing exterior lighting, which is residential in nature and not obtrusive. Petitioner was not required to supply photometrics because it is evident that the existing residential-style lighting is appropriate for the site. No new structures are proposed, and the existing building is residential in character, with suitable landscaping and screening.

## V. RECOMMENDATIONS

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2668, which requests a special exception under Section 59-G-2.42 for a service organization, to be operated in an existing structure located at 7509 Needwood Road, Derwood, MD, known as Lot P1, Block B, Derwood Heights Subdivision, Tax Account No. 04-00048193, in the R-200 Zone, be **granted** with the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record, including the final Site Plan, Exhibit 30(a), and by any representations made by Petitioner's counsel that are identified in this report or in the Board's Opinion in this matter.
2. Petitioner must stripe the parking lot at the rear of the site for 16 parking spaces, as shown on the Site Plan. The two spaces shown at the west of the end of the parking lot must be striped diagonally to indicate that no parking is permitted, and each one must be posted with a sign stating "No Parking – Turnaround Area."

3. Petitioner must post signs stating "No Parking in Driveway" in at least two conspicuous locations along each side of the driveway, including one in the immediate vicinity of the Taiwan Culture Center building.
4. Petitioner must inform all members, in writing, that parking in the driveway or on local streets is prohibited at all times. A copy of such notice shall be provided to the Board.
5. Petitioner must screen the view of the parking lot and driveway from the east by planting a row of emerald green arborvitae as shown on the Site Plan, approximately five feet apart, with a minimum height of six feet at planting. Planting must be accomplished during the first appropriate planting season for arborvitae after approval of the special exception.
6. Petitioner must replace any perimeter plantings (Leland cypress and arborvitae) that die, during the next appropriate planting season, with a plant of the same species and reasonable size.
7. The front parking area, located between the site entrance and the building, must be reserved for handicapped-accessible parking. If applicable regulations under the Americans with Disabilities Act ("ADA") do not require traditional paving and striping, Petitioner may maintain the present brick condition of the parking area, provided that a least one sign is posted indicating that parking in this area is restricted to vehicles permitted to park in handicapped-accessible parking spaces. It will be Petitioner's responsibility to determine what is required under the ADA.
8. Regular activities are limited to the hours between 10:00 a.m. and 3:00 p.m. Monday through Friday.
9. Special activities shall be limited as follows:
  - a. Weekday movies limited to one day per week. During the months of June, July and August, movie showings must end before 8:00 p.m. so that all

persons leave the premises before dark. During the other months of the year, movie showings must end by 3:30 p.m. to avoid adding to peak period traffic congestion.

- b. Saturday and Sunday seminar functions, limited to one per month, between the hours of 1:00 p.m. and 5:00 p.m.
  - c. Open house events, limited to one Saturday in January, between 10:00 a.m. and 2:00 p.m., and one Saturday in August, between 2:00 p.m. and 6:00 p.m. Adjacent and confronting neighbors must be notified of the dates and times of each open house, in writing, at least one month in advance.
10. Meetings of the Board of Directors may take place on site during regular weekday hours or on Saturday mornings. No such meetings may take place on site on Sundays.
11. Attendance at all events must be strictly limited as follows (or by any lower occupancy limit that may apply to the building pursuant to the Fire Code):
- a. No more than 20 people on site at one time during any weekday activity.
  - b. No more than 30 people on site at any one time during weekend seminar functions.
  - c. No more than 60 people on site at any one time during the two open houses.
12. Petitioner must maintain an accurate, up-to-date log of all persons visiting the Center, and make this log available to county officials upon request.
13. No more than 16 vehicles may be permitted on site at any one time, plus two handicapped-accessible vehicles in the front parking area. Vehicles parked on site must be limited to automobiles, light trucks or vans.
14. Petitioner may maintain the existing sign on the building, and may install an additional sign on the mailbox only if such sign complies with the provisions of the

county sign ordinance, Article 59-F. A representation of any sign used must be submitted to the Board for its records.

15. Petitioner must establish a Community Liaison Council, to be comprised of no more than four representatives of the Taiwan Culture Center, three to four representatives of the local community, and the People's Counsel of Montgomery County as *ex officio* member. No member of the Taiwan Culture Center may serve as a local community representative on the Community Liaison Council. Membership on the Community Liaison Council must be offered first to the owner of the adjacent home to the east and the two homes directly confronting the subject site across Needwood Road, then to other residents of the immediate area. If more than four community members desire to sit on the Community Liaison Council, the Petitioner may, at its discretion, allow additional community representatives. The Community Liaison Council shall meet at least three times per year, spaced out roughly evenly during the year. The People's Counsel and community representatives shall be consulted regarding their availability before meeting dates are established.
16. The Petitioner must submit an annual report to the Board of Appeals, in October of each year, describing the Petitioner's compliance with the terms and conditions of the special exception, the meetings of the Community Liaison Council, and how the Petitioner responded to any concerns or complaints raised by members of the Community Liaison Council or other area residents during the year.
17. The Board retains jurisdiction to impose a condition requiring the installation of a chain across the driveway after dark, if future evidence so warrants.
18. The Hearing Examiner shall convene follow-up hearings during the Fall of 2007 and the Fall of 2008 to assess the Petitioner's level of compliance with the terms and conditions of the special exception. In conjunction with such hearings, the Hearing Examiner may request one or more surprise site inspections by the Department of

Permitting Services. The Hearing Examiner shall make a recommendation to the Board, following each such hearing, as to whether the evidence (a) suggests that the special exception should be continued without modification, or (b) indicates a lack of compliance with the terms and conditions of the special exception, resulting in adverse impacts to immediate neighbors or the general neighborhood that warrant either modification of the terms and conditions or revocation of the special exception.

19. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: November 21, 2006

Respectfully submitted,

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Françoise M. Carrier  
Hearing Examiner